UNITED
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AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 757

Case No. 819: HAMAD

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry, Vice-President; Mr. Francis Spain;

Whereas, on 28 October 1994, Awni Mahmoud Hamad, a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), hereinafter referred to as "the Agency", filed an application requesting the Tribunal, inter alia:

"[to order the production of certain documents, and]

b. [to consider the] Applicant's period of service with the Respondent from 08.10.1957 to 01.09.1986 a period of service qualifying for termination indemnity.

c. [to apply] the UN Operational rate of exchange of US$ 1 = LS 11,20, for the purpose of paying termination indemnity for periods ending 31 May 1992. For periods post 31 May 1992, [to apply] the UN Operational rate of exchange, as it stands vis a vis the given periods.

d. [to order] payment of counselling and secretarial fees estimated at US$ 2,000.".

Whereas the Respondent filed his answer on 28 August 1995;

Whereas the Applicant filed written observations on 23 April 1996;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 8 October 1957, on a indefinite appointment as an area staff member, as a Teacher at the Grade 5 level in the Syrian Arab Republic (SAR). He resigned with effect from 31 July 1986. From 26 September to 30 November 1987, the Applicant was re-employed by the Agency as a Teacher on a temporary assistance basis. With effect from 1 December 1987, the Applicant was reappointed as a Teacher "D" at the Grade 6, step 7 level.

Field Staff Circular No. 17/92, issued on 5 January 1992, invited area staff members to apply before 6 February 1992 for early voluntary retirement, and to receive retirement benefits, with effect from 29 February 1992, calculated at a favourable rate of exchange. Eligibility for early retirement was restricted to "staff members who have completed 25 years of service or who have reached the age of 50."

In a memorandum dated 23 June 1993, to the Director of UNRWA Affairs, SAR, the Applicant requested recognition of his first period of service as well as separation benefits calculated at the favourable rate of exchange set forth in Circular No. 17/92 for early voluntary retirement. On 24 June 1993, the Director of UNRWA Affairs replied that the Applicant's first period of service could not be recognized because of the election he had made in 1987 for re-employment by reappointment, which established his service computation date as the date of his re-employment. The Director stated, "You were also informed that you could change your option from reappointment to reinstatement within one year, but you never attempted such a change." He noted, finally, that the Applicant

could have elected early voluntary retirement without changing his service computation date because he was over 50 years of age in 1992.

In a letter to the Field Director, dated 14 February 1994, the Applicant requested approval from the Commissioner-General to appeal directly to the Administrative Tribunal. In a reply dated 7 March 1994, the Field Administration Officer, SAR, denied this request.

On 8 April 1994, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 11 July 1994. Its evaluation, judgement and recommendation read, inter alia, as follows:

"III. **Evaluation and Judgement**

17. The Board examined all documents cited before it, including the Appellant's personal file and all pertinent rules and came out with the following:

...

The Board found no evidence that the Appellant submitted an application for early retirement within the prescribed time of SAR Field Circular 17/92.

(d) In this context, the Board is of the opinion that the Administration has acted within the framework of standing rules and personnel directive governing re-employment, early voluntary retirement and service computation date by not recognizing the Appellant's service prior to his reappointment effective 1 December 1987.

(e) The Board also noted that the first time the Appellant wrote to the Field Director requesting recognition of his prior service and calculation of separation benefits at the rate of LS [Syrian Pound] 11.20 to 1 US Dollar was on 23 June 1993 i.e. more than 1 year after the deadline of SAR Field Circular 17/92, and it was not until 8 April 1994 that the Appellant submitted his appeal to the Board.

> The Appellant did not comply with the provisions of Area Staff Rule 111.3(1) which requires the staff member to submit a letter to the Field Director requesting that the administrative decision complained of, be reviewed, prior to submitting his appeal to the Board.
>
> Furthermore, the Board finds that the lapse of time before the appeal was filed massively exceeds the time limits prescribed by Area Staff Rule 111.3.

IV. **Recommendation**

18. In view of the foregoing, and without prejudice to any further oral or written submission to any party the Appellant may deem pertinent, the Board unanimously makes its recommendation to uphold the administrative decision appealed against; and that the case be rejected."

On 2 August 1994, the Deputy Commissioner-General, UNRWA, transmitted a copy of the JAB report to the Applicant and informed him as follows:

> "You will note that the Board found that the Administration acted within the framework of standing Rules and Personnel Directives governing re-employment, early voluntary retirement and service computation date by not recognizing your service prior to your reappointment effective 1 December 1987. The Board also noted that you did not request calculation of your separation benefits at the rate of SYP [Syrian Pound] 11.20 to US$ 1.00 until more than a year after the deadline of the applicable Field Circular, and that you did not comply with the provisions of the Staff Rule which states that a request for review of the administrative decision complained of is a prerequisite to the submission of an appeal. Finally, the Board found that the lapse of time before your appeal was filed greatly exceeded the time-limits prescribed by Area Staff Rule 111.3.
>
> Based on the foregoing, the Board unanimously made its recommendation to uphold the administrative decisions appealed against, and that your case be rejected. I accept the findings and recommendations of the Board, and accordingly your appeal stands rejected."

On 28 October 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was coerced into the option of re-employment by reappointment by the requirement that separation benefits for reinstatement be repaid in US dollars.

2. The Respondent's action in changing the exchange rate for separation benefits was illegal and violated the acquired rights of the Applicant.

Whereas the Respondent's principal contentions are:

1. The Applicant's claim is time-barred, as the JAB found.

2. The Respondent's decision is in accord with the Agency's rules and is proper.

The Tribunal, having deliberated from 4 to 17 July 1996, now pronounces the following judgement:

I. The Tribunal cannot accept the Applicant's preliminary plea for the production of additional documents. It finds that the material before the Tribunal is sufficient for consideration of the case.

II. The first question is whether, and if so, to what extent, the Applicant can benefit from the provisions of Field Staff Circular 17/92 of 5 January 1992, which allowed staff members who had reached the age of 50, or who had completed 25 years of service, to opt for early voluntary retirement, with benefits calculated at a more favourable rate of exchange of Syrian pounds as against the US dollar.

III. The Applicant resigned from the Organization on 31 July 1986, having received all the payments due to him after 29 years of service. However, he rejoined the Organization on 1 December 1987, opting to be re-employed and not reinstated. On 22 June 1993, the Applicant requested the Respondent to treat his present service as a continuation of his 29 years of past service, i.e. as though he had been reinstated in 1987. He would have then been entitled to benefit from the circular of 5 January 1992. On 24 June 1993, the Respondent rejected the Applicant's request, noting that the Applicant had explicitly opted to be re-employed and not reinstated. When the Applicant rejoined the Organization in 1987, he was informed that he could change his election from reappointment to reinstatement within the year, provided that he refunded the payments he had received on resignation in July 1986. He did not do so. On 8 April 1994, the Applicant lodged an appeal with the JAB against this decision.

IV. The JAB examined the case and concluded that the Applicant's appeal was time-barred, in two respects. Firstly, the Applicant failed to comply with the time limits set forth in Field Circular 17/92 of 5 January 1992. Secondly, the Applicant's appeal to the JAB was filed on 8 April 1994, late by nearly a year. No explanation for such dilatory conduct was offered to the JAB, nor is any forthcoming now before the Tribunal.

The JAB concluded that the Applicant's case was time barred and did not conform with the provisions of Staff Area Rule 111.3(1). The Tribunal confirms the JAB's finding that the appeal is clearly time-barred.

V. The Tribunal notes that the issues raised in this case have been addressed by the Tribunal in its Judgement No. 716, Khadra et al, (1995). As in Khadra, the Applicant voluntarily resigned and explicitly opted for re-employment instead of reinstatement when he

re-entered the service of UNRWA. The Tribunal finds no reason to depart from its prior holding, and so, the Applicant is, therefore, bound by the consequences of his exercising that option.

VI. For the foregoing reasons the Tribunal rejects the application in its entirety.

(Signatures)

Samar SEN
President

Hubert THIERRY
Vice-President

Francis SPAIN
Member

Geneva, 17 July 1996

R. Maria VICIEN-MILBURN
Executive Secretary